

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**  
**12100 Park 35 Circle, Bldg. A, Suite 173**  
**December 9, 2011, 9:00 a.m.**

1. Call Board Meeting to Order:

The Board Meeting was called to order by Mr. Greg Smyth on December 9, 2011 at 9:03 a.m. Board Members present were; Mr. Greg Smyth (Presiding Officer), Mr. Jon Hodde (Assistant Presiding Officer), Mr. Bill O'Hara, Mr. Paul Kwan, Mr. James Childress and Mrs. Mary Chruszczak. Members not present were Mrs. Nedra Foster, Mr. Robert Price and Mr. Gerardo Garcia.

2. Floor Open to Public Comments:

Mr. Smyth opened the floor to public comments. Mr. Smyth advised of a sign-in sheet for continuing education. Mr. Jim Gillis, Chair of the Texas Society of Professional Surveyors (TSPS), Education Committee, started by saying that over the past the Society failed to recognize some of the past educators that had contributed so much to the education of surveyors in Texas. Mr. Gillis then listed those in the past that they failed to honor and stated the Society was going to begin recognizing educators. Today, however, they wanted to recognize and honor Mr. Greg Smyth for his contribution to educating surveyors through his annual seminar "Locating Original Corners". Mr. Gillis next read the award. Mr. Gillis thanked Mr. Smyth. Mr. Smyth thankfully stated he appreciated the award. Applause was given. Mr. Smyth next went on with business, asking if there were any other comments.

3. Election of Assistant Presiding Officer:

Mr. Smyth advised that on odd numbered years the Vice Chair of this Board is elected. He next opened the floor to Board Member nomination for the position of Assistant Presiding Officer. Mr. O'Hara nominated Mr. Jon Hodde. There were no other nominees. Then by general consent Mr. Hodde will continue as Assistant Presiding Officer (Vice Chair).

4. Discussion possible approval and vote to approve the September 16<sup>th</sup>, 2011 Board Meeting Minutes:

Mr. Childress motioned to accept the minutes as submitted. The motion was seconded by Mr. O'Hara. All voting members were in favor. Mr. Hodde motioned that due to the length of the minutes Board Members should receive the minutes within two weeks after the meeting. Mr. O'Hara seconded the motion. All voting members were in favor.

9:13- Executive Session. Mr. Smyth read the required notice regarding Chapter 551 of the Government Code and seeking Legal Counsel regarding agenda item 7B. The closed session was for consultation with attorney to discuss a possible settlement.

10:01- Back in Open Session. All members present prior to the Executive Session are still present. Mr. Smyth advised that no action was taken in closed meeting. See 7B for further detail.

5. Director's Report:

A) Budget, Annual Financial Report, Purchasing and Projects:

Mr. DiTucci advised that the budget report and the annual financial reports are available. There is also a report online. Mr. DiTucci advised he has purchased the sound equipment that we are using today, 2 fireproof filing cabinets to help out with continuity plans. Those cabinets will backup staff work products. Regarding the Agency Continuity plans, Mr. DiTucci advised he spoke with Mr. Terry Keel at the Texas Facilities Commission who referred him to one of his deputies who referred him to the Texas Commission on Environmental Quality (TCEQ) who suggested that the Texas Facilities Commission should be whom he should approach. Mr. DiTucci also tried to approach the General Land Office through this Agency's proxy, Mr. Bill O'Hara. Both directions are still working at this time. Additionally, a computer that meets Texas Commission on Environmental Quality (TCEQ) specs and recommendations was also purchased. Mr. DiTucci next discussed the Agency cost to the State in relationship to Attorney General (A.G.) services for FY 2010 and 2011.

B) SORM's Audit:

Mr. DiTucci advised that the State Office of Risk Management (SORM) came by and later produced a report. They suggested we purchase and make available to staff a fire extinguisher. That has been completed. Also an evacuation plan was drawn, however, has not yet been shared with staff. Also we did get the fireproof filing cabinets as addressed earlier.

C) Comptroller Audit:

Mr. DiTucci went on to address the Comptroller's Audit. He stated they found a few minor violations. What the Board needs to take note of is if the Executive Director leaves then there is a small window to cut off credit cards. Also if others leave then the Executive Director has the same small window to act. That is the issue that came out of their report. Additionally, Mr. DiTucci advised the Board he sent a letter to the Comptroller's Office regarding the professionalism of the 2 auditors that visited with us. They were helpful and courteous.

D) Renewals:

Mr. DiTucci next addressed renewals and the problems the agency is encountering with online renewals. There is about 30% more phone calls relating to the online renewal system which is causing some stress on staff. Mr. DiTucci added that for the time being we are just

going to have to work through it. Other agencies on the same system are having the same problems and hopefully next year it is better. There are some people that have had no problems at all and there are other that have called 2 and 3 times to get passwords and start over. Mr. DiTucci addressed some of the factors that could be causing the problems.

E) Investigative Files/Volunteer Program/Alpha Listing of Records:

Mr. DiTucci advised he was charged with organizing the complaint files and that the magazine racks, envelopes and the adjusting of the shelves in the large walk-in storage file have been completed. New staff (Stefani Scherer) was brought on and there were hopes to get 1 or 2 volunteers through the Texas Work Force Commission. He went on to say that did not happen. Work load and effort shifted because of renewals. We did however manage to get our numerical application files converted over into an alpha list. So the rework of the files is underway and is on hold until renewals have passed us.

F) Open Records Requests:

Mr. DiTucci advised there were 4 open records that came in mostly dealing with surveyor files. There is one that is still pending. The party involved was to come down and review the files but as of yet has not come down. They were also given the opportunity to discuss and visit with the Investigative Panel. There has been no response from them.

G) Memorandum of Agreement between TBPLS and Geoscientists:

Mr. DiTucci advised the Memorandum of Agreement between the Texas Board of Professional Land Surveying and the Texas Board of Geoscientists was signed. Mr. DiTucci added he needed to get a copy from the Geoscientists.

H) Discussion with Engineering Board regarding Records Retention:

Mr. DiTucci advised he has spoken with Mr. Kinney at the Engineering Board regarding their Records Retention Schedule and learned they keep everything back 10 years on electronic file because of recidivism. Mr. DiTucci also stated he called regarding making changes to our records retention schedule and learned we can make changes at any time. However it normally takes about 1 month to get those changes approved. Mr. DiTucci added we have already started to review our hard copy files to determine if our electronic copies are the same. That project was started with the FY 2010 complaint files. Mr. DiTucci added that we are working 2011 and 2012 complaint files in that format as they come in. That will give us 3 of the 10 years. Mr. DiTucci next added that our computer files indicate there are many years of electronic files, however, it is not known if our computer files are as complete as our hard files. That part of the rework of the files will need to be completed so we can have a web based complaint file. There may be some legal issues that have to be worked out with the A.G.'s Office regarding a web based complaint list.

I) Brooks Act:

Mr. DiTucci advised he was charged with advising the Governor's Office of the issues that surveyors were having regarding some confusion between State and Federal purchasing laws. Mr. DiTucci stated he had forwarded the email to Mr. Ed Robertson and had spoken to Mr. Robertson. Additionally, Mr. DiTucci advised Mr. Robertson he was aware of a State

agency called State-Federal Relations but did not want to approach them directly. Also in this conversation it was learned that the Agency has a new representative at the Governor's Office by the name of Ms. Molly Rutledge.

6. Discussion on the following:

A) Pipeline Issues:

Mr. DiTucci advised this was an issue and received a packet at the office and it dealt with an education program targeting awareness of pipelines. If you hit a pipeline then you would be responsible for it. Mr. DiTucci advised he made the Texas Society of Professional Surveyors (TSPS) aware of it.

B) Mrs. Foster email regarding Board Rules:

Mr. DiTucci advised that Mrs. Foster sent in an email regarding rule changes and has made that available to the Board. Mr. DiTucci was not certain if the rule changes were part of the larger rewriting of the rules or not. Mr. Gilley has put together a committee to look over the rules and consider changes that might be needed. Also the new computer based testing that is coming will be taken into consideration with the rewrite. Also the committee is looking at the rules to deal with resolving the proper documentation of easement (legal platting). What has happened over the years is non-signed and sealed documents have been filed for record. This happens when preliminary work product finds its way to the County Clerk's Office and gets filed. It was felt the best way to begin to resolve this issue is to write a letter to the Association of County and District Clerks and get them to understand and screen the documents at their end. That would be more efficient. Mr. Gilley also advised that he has not seen one of these cases in about 2 years. Four, five and six years ago it was different than what it is now.

C) Changes to our online web page as relating to continuing education:

Mr. DiTucci advised that he received a large number of phone calls wanting to know which of our courses listed online were Ethic Courses. Mr. DiTucci advised he contacted Mr. Kwan who identified the Ethic Courses. A column was added to the web page identifying which courses were Ethics. In addition to this, courses were updated to reflect hours allowed.

D) Louisiana Merger Bill:

Mr. DiTucci advised the Board of a possible merger bill in Louisiana to merge the Engineers and Land Surveyors. An email was provided for the Board's review.

E) Firm Registration Fees:

Mr. DiTucci advised that the Board asked him to look into what it would take to get an FTE (a part-time investigator and a part-time staff person), if we went up on firm licenses. Mr. DiTucci advised the Board that increasing fees by \$25 would generate \$35,000. If we increased fees \$100 it would generate \$140,000. Mr. DiTucci next added that he has compared the Geoscientist Board who license approximately 4500-5000 and have a staff of

8 persons to us, who license approximately 4500-5000 and have a staff of 5 persons. Mr. DiTucci advised that Mr. Gilley had an idea that if we could sort out firms into 2 groups, Headquarters and Branches, then we could charge the Headquarters' a little more in fees than the Branches to generate what a cost analysis would justify for the FTE. Mr. Gilley laid out his thoughts of how to proceed with justifying the cost and felt that it may be about a \$50 increase for each. He next advised he would have something for the next Board Meeting that would cover the cost of enforcing against Firms. It was also discussed that the Legislature would have to approve the FTE as well as the needed Appropriation.

7. Complaints- Garey Gilley, Investigator:

A) Discuss closed cases:

Mr. Gilley reported on the following complaints:

**Complaint: 11-17**

Mr. Gilley reported that the subject surveyor prepared a survey showing what the County alleged was a public road. The survey report showed an existing 12 foot wide road. The complainant alleged the existing road was a private road. The County sued the complainant in district court. The court ruled that the County has fee simple interest in the road as shown on the survey introduced into evidence at the trial. Prior to the final judgment of the court being entered into, the county asked the subject surveyor to prepare a plat to be filed in order for the plat to be referred to in the judgment. The subject surveyor prepared an exhibit as instructed by the County Engineer which indicated the middle of the 12 foot wide road to be the centerline of a 60 foot wide County Road. Without court approval the subject surveyor filed the exhibit in the County Deed Records. The complainant's attorney objected because the exhibit had not been entered into evidence at the trial.

The subject surveyor offered in his response he was only following the instructions of his client, the County. He admits that he was not knowledgeable with court procedures as this was his first time to serve as an expert witness. Mr. Gilley pointed out, and he acknowledged he understood, that his role of an expert witness was to present the facts to the court and follow the court's instruction and not that of either party to the litigation. However, once the exhibit was filed in the public record, the result is casting a cloud on the title of the adjacent land owners.

The subject surveyor has since been elected to serve as a County Commissioner. He has agreed to petition the Commissioners Court to release claim or interest in the ROW shown on the exhibit except for the existing 12 foot road shown thereon.

Mr. Gilley did not find any rule violations, however, he recommended that the subject surveyor should be warned as to not offer to perform, nor perform, services for which he/she is not qualified in any of the technical fields involved, by education or experience, without retaining the services of another who is so qualified.

**Complaint: 11-21**

Mr. Gilley reported that the subject surveyor prepared an exhibit for the County of San Augustine. The exhibit clearly shows it was prepared to show a proposed extension of a



county roadway. The complainant is alleging that the subject surveyor is trying to take her land. I believe this is a misunderstanding and should work out.

The subject surveyor was only preparing the exhibit for use by the County Commissioner. At the appropriate time the subject surveyor will prepared a final survey.

Mr. Gilley found that there are no rule violations as a result of this investigation.

**Complaint: 11-26**

Mr. Gilley reported that the subject surveyor prepared a survey on properties which are adjacent to the property of the complainant. The complainant became concerned that the survey prepared by the subject surveyor is in conflict with his property. The complainant retained the services of another local surveyor to review and advise him as to the survey prepared by the subject surveyor. The consulting surveyor reviewed the chain of title beginning with an 1885 partition. The consulting surveyor concluded the true location of the line in question is uncertain and disputed.

Mr. Gilley interviewed both surveyors and reviewed the documents submitted with the complaint and documents submitted with the response by the subject surveyor. It was clear that the discrepancies which might cause conflict of location between properties are due to conflicting elements within the chain of title. The discrepancy between the surveyors is a difference of professional opinion as to how those conflicting elements should be resolved. These discrepancies can only be addressed by the property owners or a court of judicial authority.

Mr. Gilley found no violations of the Board Rules or of the Act and recommended this complaint be dismissed without civil penalty.

**Complaint: 11-32**

Mr. Gilley reported that the complainant also filed complaint No. 11-31. The surveyors which are subject to these complaints prepared surveys of Lots within Cambridge Shores Addition situated in Grayson County, Texas. The recorded plat of said addition was filed in January of 1962. The plat as recorded contains little locative information and much of that information is ambiguous.

The subject surveyors prepared surveys on different but adjoining Lots. Their survey reports differ from surveys prepared by another surveyor a few years earlier. The complainant and another lot owner asked the surveyor to get together and review their findings. The surveyor met and compared their current surveys with surveys each had made within the same Block at earlier dates. They did so and came to a mutual agreement as to the proper application of the rules of boundary construction in order to resolve the conflicting elements within the plat. Their final location of the Lot corners is not consistent with the survey which had been prepared for the complainant.

Mr. Gilley interviewed the involved surveyors and has reviewed the plats and numerous surveys prepared by surveyors within the Block in question.

Mr. Gilley found no violations of the Act or of Board Rules.

**Complaint: 11-33**

Mr. Gilley reported that the subject surveyor prepared a survey of an improved Lot in September 15, 2002. On or before November 15, 2009, the complainant asked for an updated survey. The subject surveyor explained because of five year time lapse he would be required to prepare a new survey which the complainant approved and he did on November 15, 2009. On or before February 07, 2011 the complainant again needed an updated survey. The subject surveyor once again informed the agents for the complainant there would be a charge for a current survey. The complainant felt she should not be forced to pay for the current survey which is the basis for this complaint.

There are no rule violations.

**Complaint: 11-37**

Mr. Gilley reported that this complaint was opened due to concern as to a branch office located 200 plus miles from the main office. The method in which they were offering Land Surveying services was within the Board Rules but with a tint of gray. However, it is now a moot point due to the fact that the SIT in the branch office is now registered.

There are no rule violations.

**Complaint: 11-40**

Mr. Gilley reported that the subject surveyor prepared a survey of a portion of Lot 7, Block 19 Southeastern Annexation to the town of Gatesville. The complainant proposed to build on the tract as surveyed and was informed by the City he would need to re-plat. The subject surveyor prepared a plat for submittal to the City. When the subject surveyor asked to be paid for the additional work required by the re-plat, the complainant refused to pay because he alleged the subject surveyor should have known the City would require a re-plat and should have included it with the survey.

There are no rule violations.

**Complaint: 11-41**

Mr. Gilley reported that the complainant retained the subject surveyor to locate and mark the southeast line of his property. The complainant relied upon the iron rods set by subject surveyor and built a retaining wall. Another surveyor located the common corner between the complainant and a neighbor. The common corner as located by the second surveyor did not fit with the wall as constructed.

The complainant asked for a clarification between the surveyors. The surveyors feel they did locate the common corner in the same location.

Mr. Gilley met the complainant on site and he pointed out the iron rods which he said were set by the subject surveyor. However the irons were not capped so it could not be confirmed that they were the ones set by the subject surveyor. The iron rods which were observed could have been disturbed by the construction.

There are no rule violations.

**Complaint: 11-43**

Mr. Gilley reported that the complainant retained the subject surveyor to prepare surveys on three tracts of land. The subject surveyor completed the field work, however, he had not

prepared the survey reports. The complainant acquired the necessary deeds and delivered them to the subject surveyor. The complainant paid the subject surveyor \$985.08. The complainant had a fence installed to conform the tract lines as marked in the field.

The subject surveyor discovered one of the tract corners had been incorrectly located causing the fence to be installed along a line which was mis-located.

The subject surveyor informed the complainant of the error. The complainant asked for completed survey reports which had not been completed. The subject surveyor acknowledges he was delayed in getting the reports finished. However, the reports were finished and furnished to the complainant.

The subject surveyor paid to have the fence moved to its rightful place and refunded all monies which had been paid by the complainant.

There are no rule violations.

#### **Complaint: 12-01**

Mr. Gilley reported that the complainant filed a complaint alleging the subject surveyor had failed to provide survey services for which he had been paid. The complainant alleged the subject surveyor had been retained to prepare and process a plat of her property through the city.

The subject surveyor provided proof of the time line by e-mails with the city as to the dates of submittal and his response to the city planning department. All submittals and responses appear to have been timely.

The plat had not been approved and filed for record because the complainant had not provided to the city proof of taxes being paid.

Mr. Gilley did not find the subject surveyor had violated any Board Rules.

#### **Complaint 12-08**

Mr. Gilley advised this case was processed as a complaint; however, the surveyor did renew the license in March which made the case moot. This case was closed and dismissed.

#### **B) Discuss working cases:**

##### **Complaint: 10-11 and 11-23**

Mr. Smyth stated we will now take up the item discussed in closed session. Not participating in the closed session was Mr. Jon Hodde, Mr. Jim Childress and Mr. Greg Smyth due to legal issues and they will be abstaining from any voting or discussion of any motions made. Mr. Paul Kwan motioned to accept the Agreed Order regarding case number 10-11 and 11-23. Mr. Kwan laid out the issues and Order. The Order required the surveyor to take 16 hours of continuing education courses in addition to the required 12 hours, pay a \$3,000 fine, probation of his RPLS license for 5 years and suspension of his LSLS license for 3 years. Additionally the Board will have the right for 5 years to conduct on-site inspection by the investigator with giving the surveyor 48 hours notice and the surveyor cannot act as an expert witness. Mr. O'Hara seconded the motion. In discussion the renewal fee issue was brought up and will need to be worked through. A vote was called for. All members that could vote were in favor. Mrs. Nancy Fuller, OAG, advised that it was permissible to have 3 members act for the Board under our present circumstances. She did the research and laid



out the legalities. Additionally, Mrs. Melissa Juarez was the Attorney General Representative present during the closed session for counsel to the participating Board Members. Mr. Kwan next laid out the style of the case. Mr. James Mortensen, RPLS #1867 Licensed State Land Surveyor vs. The State of Texas. Mr. Mortensen is from Uvalde, Texas.

**Complaint: 11-24**

Mr. Gilley advised the surveyor was asked to come back for a second meeting before the Investigative Panel. This case is still working.

**Complaint: 11-25**

Mr. Gilley advised that the Investigative Panel has met with this surveyor. He discussed the case some. This case is still working.

C) Informal Settlement Conference:

**Complaint: 11-919 (11-44)**

Mrs. Chruszczak, acting investigator, advised the Board there was an Informal Settlement Hearing held on this case. There were no orders. At this time we are waiting for some additional documents and Firm follow up actions.

D) Investigative Panel:

**Complaint: 12-05**

Mr. Gilley reported that the subject surveyor prepared a survey of a Lot, with no improvements in July 2011. The survey was relied on in a closing. The buyer retained another local survey firm to prepare a topographic survey of the Lot for use in the design of a proposed structure. The local survey firm did a verification of the previous survey report which had been supplied by their client, the purchaser, who had relied on the survey report of July 2011. The local firm found the iron rods, reportedly set by the subject surveyor to mark the Lot corners, were not in place. Also a pool deck and landscaping features which appear to encroach onto the subject Lot were not shown on the survey report. The local firm contacted the subject surveyor and expressed their concern as to the discrepancies. At first, the subject surveyor did not respond. But after what the complainant says was several attempts, the subject surveyor did send a field crew back to the site and set the missing monuments. The monuments set by the subject surveyor were incorrectly located. Upon their return, the subject surveyor did agree there were discrepancies and attempted to take steps to correct them. A revised survey was issued September, 2011 with the Lot corners correctly marked and the visible conditions as to a possible encroachment were noted. The subject surveyor responded that the Firm had issued a corrected survey and had refunded their fee. Mr. Gilley asked the subject surveyor for verification as to who the fee had been refunded to since the subject surveyor had earlier advised their client was the title company. The subject surveyor determined that a corrected survey report was not issued and the fee had not been returned as that responsibility had been assigned to other firm employees.

In his response the subject surveyor stated in reference to the rear Lot corners "I fully admit we used a rotation that was out by 4 degrees." Mr. Gilley added, if that had been the only

problem the northwest Lot corner (a rear Lot corner) would have been misplaced by about 8-5/10 feet. The discrepancy between where the Lot corner was incorrectly marked and the true corner location was about 3-5/10 feet. Mr. Gilley asked the subject surveyor about this and his explanation was the crew must have used an incorrect back sight.

Mr. Gilley attached the work notes made by the field crew on the day of the survey. Mr. Gilley stated subject surveyor was unable to identify the equipment used by the field crew, whether it was a total station or GPS. In either case Mr. Gilley did not see how the subject surveyor would have been able to determine the positional tolerance of the field data.

Mr. Gilley interviewed the neighbor who lives next to the Lot being surveyed. He sent the following letter (names redacted);

*"My name is \_\_\_\_\_ and I live in the Longmire on Lake Conroe subdivision in Conroe, Texas. I am a retired land surveyor with 30 years of experience in Land Surveying in the state of California. I am also on the Property Owners Association Committee for Architectural Control of our subdivision. I was informed that lot 39 of section 3, block 1 of our subdivision had been sold. Later that week I observed a small car parked in front of lot 39 and two men measuring across the lot as if they were attempting to do a lot survey for the finance agency involved in the purchase of the lot. I asked one of the men who he represented and was told they were working for \_\_\_\_\_ Land Surveying Inc. As I observed their process, I noticed that they did not use a survey instrument or GPS unit at any time for the survey work. They were using a metal locator, a 100 foot cloth tape, and a shovel. They appeared to only be looking for property corners for lot 39. After they found one or two points and had attempted to find others, they left and did not return that day. Later that month I got a request through the Architectural Control Committee from the owner of lot 39 stating that he wanted to relocate the storm drain and easement. I recommended \_\_\_\_\_, LTD for the survey work and informed the lot owner that \_\_\_\_\_ is the co-owner of \_\_\_\_\_ and a resident of our subdivision. \_\_\_\_\_ did a proper survey with a total station instrument and GPS to include tying in monuments found on adjoining lots. They did a topographic survey for design of the proposed storm drain and easement relocation. They did a very professional survey of the caliber I am accustomed to when I was still working as a surveyor. A few weeks after \_\_\_\_\_ did their survey, I noticed another survey crew with a pickup parked in front of lot 39. The truck had the name \_\_\_\_\_ Land Surveying on the door. I watched as they seem to be putting steel rods in the ground at the approximate lot corners at the rear of the lot. I notified \_\_\_\_\_ to what they were doing so he would be aware of the second visit from \_\_\_\_\_ Surveying. Please feel free to contact me with any other questions you may have in this matter."*

Mr. Gilley advised the subject surveyor has violated the following Board Rules:

**§663.15. Precision.**

(a) The actual relative location of corner monuments found or set within the corporate limits of any cities in Texas shall be reported within a positional tolerance of 1:10,000 + 0.10 feet.

**The subject surveyor violated this rule when he failed to be able to demonstrate the positional tolerance of the field work.**

(e) Survey measurement shall be made with equipment and methods of practice capable of attaining the tolerances specified by these standards.

**The subject surveyor violated this rule when he failed to be able to verify the type of survey equipment used by the field crew.**

**§663.10. Disciplinary Rules.**

The land surveyor shall not:

(4) fail to exercise reasonable care or diligence to prevent his/her partners, associates, or employees from engaging in conduct which, if done by him, would violate any of the provisions of the Act or rules;

**The subject surveyor violated this rule when he failed to exercise reasonable care or diligence to prevent his/her employees from engaging in conduct, (the field procedures,) which, if done by him, would violate any of the provisions of the Act or rules;**

(7) perform any acts, allow any omission, or make any assertions or representation which may be fraudulent, deceitful, or misleading, or which in any manner whatsoever, tend to create a misleading impression;

**The subject surveyor violated this rule when he failed to denote the encroachment of the pool deck and landscaping features on the survey report of July 2011. The subject surveyor certification states, "There are no visible conflicts or protrusions, except as shown."**

**§663.16. Boundary Construction.**

(c) A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed. The land surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.

**The subject surveyor violated this rule when he failed to perform adequate field research, which if properly performed would have recovered Lot corners marked by monuments of record dignity.**

The subject surveyor is in violation of five (5) Board Rules as stated above. The matrix adopted by the Board indicates a reprimand to be issued and \$ 7500.00 in civil penalties to be assessed to the subject surveyor.

In addition the firm is in violation of the above referenced rules and as with the subject surveyor, the matrix adopted by the Board indicates a reprimand to be issued and \$ 7500.00 in civil penalties to be assessed to the firm.

E) Dismiss Complaints as Frivolous:  
None.

F) Flow Chart of Investigation/Complaint Process:

Mr. DiTucci provided the Board with a copy of a newly developed flow chart for investigation and complaint processes.

The Board went to break at 11:20 a.m. The Board was back in session at 11:45 a.m. All members present before the break are present now.

8. Committee Reports:

A) Executive Committee- Greg Smyth; Chair:

No report.

B) Rules Committee- Greg Smyth; Chair:

Mr. Smyth advised that the rules are presently being studied. Mr. Gilley is chairing a TSPS committee to develop suggested changes which will be deliberated on after final completion. The task force was appointed by Mr. Davy Edwards, President of TSPS, to come up with recommendations for this Board regarding revision of the rules from start to finish. In February it will be presented to the TSPS board. Then the report will be made to this Board, perhaps at the next Board meeting.

C) RPLS/SIT Examination Committee- Jon Hodde:

Mr. Hodde reported that there were 51 SIT test takers and 21 passed. Mr. Kwan motioned to certify all candidates that passed the SIT examination. Mr. O'Hara seconded the motion. All voting members were in favor.

Mr. Hodde reported on the RPLS exam. There were 35 candidates that took the Legal exam with 27 passing. There were 39 candidates taking the Analytical exam with 16 passing. There were 30 candidates taking the reciprocal exam with 23 passing. Mr. Hodde asked for a motion to register those that passed the examination. Mr. O'Hara made the motion it was seconded by Mr. Childress. All voting members were in favor.

Mr. Hodde advised the Board that he and Mr. O'Hara have been discussing the Act & Rules in relationship to computer based testing which will begin on January, 2014. They will submit their changes to the Board. Legislative change will also be needed.

D) LSLS Examination Committee- Bill O'Hara; Chair:

Mr. O'Hara reported that 6 individuals applied to take the exam. Only 1 showed up to test and he passed the exam. Mr. O'Hara moved to certify Mr. J.D. Davis. Mr. Kwan seconded. All voting members were in favor.

E) Continuing Education Committee- Paul Kwan; Chair:

Mr. Kwan advised the Board that at this time there seems to be a lot of people taking our Ethics Course both on paper and online. He went on to say it's the same exam but those taking the exam on paper have a pass ratio higher than those who take it online. Those on

paper have a 90% passing ratio versus 60% for those taking it online. He advised it might be because of how persons were conditioned and are use to the old fashioned way of taking paper and pencil exams. He went on to say that it is not the test itself that lead to these factors.

Regarding the applications for course approval, the first 4 pages are requests by sponsors. Mr. Kwan recommends approval of all courses and hours on pages 1 through 4 with the exception of item number 2 on page 1. Mr. Childress made the motion. It was seconded by Mr. O'Hara. All voting members were in favor.

Next Mr. Kwan addressed the individual course approval on page 5. Mr. Kwan recommends the courses but an hour rate lower than requested; 8 hours for item 1 on page 5. All the other individual courses approved including hours requested. Mr. Childress made the motion. Mr. Hodde seconded. All voting members were in favor.

F) Oil Well Issues Committee- Jon Hodde; Chair:

Mr. Hodde advised he had nothing new to report. The only thought was that the increase in reciprocity could be from oil/gas activity in South Texas.

G) Legislative Needs Committee- Bill O'Hara; Chair:

Mr. O'Hara advised he had nothing to report on. Mr. O'Hara did advise that TSPS had a new Chairman of their Government Affairs Committee, Mr. Micky Nowell.

H) Complaint Review Process Committee- Paul Kwan; Chair:

No Report.

I) Task Force on registration of Photogrammetrists, Mappers and GIS professionals- Nedra Foster; Chair:

Mrs. Chruszczak gave a brief on developments and reported on the next meeting.

9. Correspondence:

A) Phone call by Jerry Robbins:

Mr. Robbins called back in November and stated he wanted to file a complaint but was not clear. He went around in a circle and never followed up with anything.

B) Chad Snoke on retro- actively obtaining inactive status:

Mr. DiTucci read Mr. Snoke's letter to the Board. The Board felt the license will expire and he will have to re-exam should the December 31, 2011 date pass.

10. Other Business- Schedule next Board meeting:



Mr. DiTucci advised he tracked language in 661.57 and thought it was going to be discussed at this Board Meeting. He later found out differently. Mr. DiTucci advised he will get it published so the Board can act on it.

Mr. DiTucci advised that an issue came up from an individual that wanted to go inactive. However, his health and other issues brought up the question if the Board could waive the fees. Legal counsel advised that the statutes did not permit that. Mr. DiTucci will get back with that person with the answer to his question. Next a person in the audience handed Mr. Gilley \$40 to pay the inactive fee for the individual that had asked the question.

Mr. Smyth announced the passing away of Mr. Jim Noble Johnson, a past Chairman of this Board.

The Board next discussed the scheduling of the next Board Meeting. They agreed on March 9, 2012 at 9:00 a.m.

11. Floor open to public comments:

Mr. Jerry Lehw advised he renewed online. He stated it was not painless but he did get it done.

Mr. James Redman thanked the Board for the added information on complaints and the complaint process as well as putting Mr. Gilley's report online.

The Board took a break from 12:15 p.m. The Board was back in session at 1:12 p.m. All Board Members present prior to break are present now.

The Board went into Executive Session at 1:15 p.m. under the authority of the personnel exception to the Open Meetings Act.

The Board was back in Session at 3:42 p.m. All Members present prior to the Executive Session are present now. No action was taken in closed session.

12. Discuss the evaluation, duties, possible reassignment, appointment, employment, or dismissal of any of its employees:

The Board addressed the importance of continuity planning for agency staff duties and functions. The Board discussed asking Mr. Gilley, in addition to his duties as investigator, to function as an Associate Director. The Board will ask Mr. Gilley to report directly to the Board. This change would not involve a pay increase, but Mr. Gilley's related business expenses would be reimbursed by the Board. The Board expressed its desire to have Mr. Gilley assist in the development of a report which documents vital Board operations, procedures and critical deadlines. The report would also document each of the employee position duties related to the compliance in fulfilling its statutory duties.

Mrs. Chruszczak made the motion to implement this plan and Mr. Hodde seconded. All voting members were in favor.

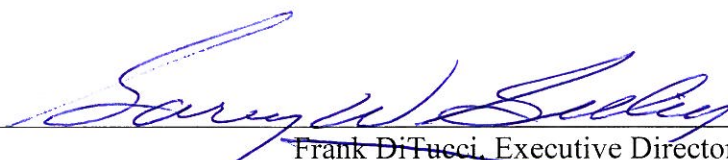
13. Adjournment:

The Board was in agreement to adjourn at 4:40 p.m on December 9, 2011.

ATTEST: \_\_\_\_\_



Greg Smyth, Presiding Officer



Frank DiTucci, Executive Director

*Acting Executive Director*

# TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

## CERTIFIED AGENDA OF CLOSED SESSION

I, Greg Smyth, the Presiding Officer of the Texas Board of Professional Land Surveying do hereby certify that this document accurately reflects all subjects considered in a closed session of the Board on December 9, 2011.

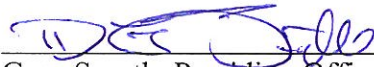
(a) The closed session began with the following announcement by the undersigned:  
“The Texas Board of Professional Land Surveying is now in closed session on December 9, 2011 at 9:13 a.m.”

(b) Subject matter of deliberation:  
Under Section 551.071. Consultation with attorney.

(c) No further action was taken, no votes were taken.

(d) The closed session ended with the following announcement by the undersigned:  
“This closed session is ended on December 9, 2011 at 10:01 a.m.”

No votes were taken in the closed session.



\_\_\_\_\_  
Greg Smyth, Presiding Officer  
Texas Board of Professional Land Surveying

# TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

## CERTIFIED AGENDA OF CLOSED SESSION

I, Greg Smyth, the Presiding Officer of the Texas Board of Professional Land Surveying do hereby certify that this document accurately reflects all subjects considered in a closed session of the Board on December 9, 2011.

(a) The closed session began with the following announcement by the undersigned:  
"The Texas Board of Professional Land Surveying is now in closed session on December 9, 2011 at 1:15 p.m."

(b) Subject matter of deliberation:  
Under Section 551.074 of the Open Meetings Act- personnel matters.

(c) No further action was taken, no votes were taken.

(d) The closed session ended with the following announcement by the undersigned:  
"This closed session is ended on December 9, 2011 at 3:42 p.m."

No votes were taken in the closed session.



\_\_\_\_\_  
Greg Smyth, Presiding Officer  
Texas Board of Professional Land Surveying